

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.781 OF 2002

Ismail Abdul Qurimvirani & Anr.

...Appellants

V/s.

The State of Maharashtra & Ors.

...Respondents

Mr.K.S. Dewal for Appellants.

Mr.M.K. Kocharekar for Respondent No.2A to 2E and 3.

Mr.Y.S. Shinde APP for the State.

Mr.Sandeep Kekane for Respondent Nos.4.

CORAM : V.M. KANADE, J.

DATED : 23rd OCTOBER, 2007.

P.C:-

1. Heard learned counsel for the Appellants, learned counsel for the Respondents and learned APP for the State.

2. Appellants are challenging the order passed by the Special Judge in Misc. Application No.325/2002 in MPID Special Case No.47/2000 whereby the Special Judge by his order dated 5th June, 2002 was pleased to direct the Investigating Officer to secure the property which consists of land admeasuring about 2 Hectare, 65.6 Ares approximately situated at village

Kausa, Dist:Thane.

3. It is submitted by the learned counsel for the Appellants that a complaint was filed against the Respondents under the provisions of MPID Act and pursuant to said complaint, the Investigating Officer made investigation in respect of assets owned by the Respondent Nos.2A to 2E and 3. Notice was issued to the Respondents by the Special Judge calling upon them to show cause why property mentioned in the notice should not be attached. After hearing the Accused and the Appellants, Special Court was pleased to attach the said property. Appellants are challenging this order on the ground that they are the owners of the said property and as such this property could not have been attached by the Special Court.

4. Learned counsel for the Appellants submitted that no notice was issued to the Appellants before passing said order. He submitted that the Respondent Nos.2A to 2E and 3 had given power of attorney to some unknown persons who, in turn, entered into an agreement for development with the Respondent No.4. He submitted that, in fact, the land which was allegedly sold to the Respondent No.4 was not the entire land of 2 Hectare, 65.6 Ares but was around 2 acres of land out of said land owned by the

Appellants. He submitted that Appellants had filed suit against the Respondent No.2 and 3 in the Civil Court and decree was passed in favour of the Appellants. However, said decree was set aside by the Appellate Court and the matter was remanded back to the Trial Court. He submitted that said suit was pending. He further submitted that Sub Divisional Officer, Thane also had passed an order indicating that Respondent Nos.2 and 3 were the un-authorised occupants and the matter was again remanded back to the Trial Court.

5. Learned counsel for the Respondent Nos.2A to 2E and 3 submitted that they had agreed to sale land property for an amount of Rs.40 lacs and they were willing to deposit said amount with the Investigating Officer. He further submitted that they had brought demand draft for an amount of Rs.40 lacs which they were willing to deposit with the Investigating Officer.

6. Learned counsel for the Respondent No.4 submitted that the said amount of Rs.40 lacs was paid by the Respondent No.4 to Respondent No.2 and 3.

7. In my view, Special Court ought to have issued notice to the Appellants before passing the impugned order since they are the original owners of the said property and they have every right to show cause why said property should not be attached. Special Judge was aware of the dispute raised by the Appellants in the Civil Court and before Sub Divisional Officer and, therefore, Special Judge ought to have issued notice to the Appellants. Order of attachment passed by the Special Judge, therefore, is liable to be set aside. Appeal is allowed. Impugned order dated 5th June, 2002 passed by the Special Judge Misc. Application No.325/2002 in MPID Special Case No.47/2000 is quashed and set aside. Matter is remanded back to the Trial Court. Respondent No.2 A to 2E and 3 to hand over the demand draft of Rs.40 lacs to the Investigating Officer who shall deposit the same in the account which is opened in the State Bank of India in respect of this C.R. and obtain further order for its investment. Special Court shall hear the Appellants and the Respondents and, thereafter, decide the matter as expeditiously as possible and in any case, till the end of January, 2008 from today. Order of attachment shall continue till disposal of show cause issued by the Special Judge.

8. Liberty is granted to the Appellants to file an application for setting aside order of attachment in respect of area which was not admittedly purchased by the Respondent No.4. If such application is made, same shall be decided as expeditiously as possible within eight weeks from the date of application.

9. It is clarified that the amount of Rs.40 lacs which is deposited by the Respondent Nos.2A to 2E and 3 is without prejudice to the rights and contentions. If interim application filed by the Appellants herein is allowed, order of attachment to that extent shall be vacated.

. Appeal is accordingly allowed and disposed of in above terms.

V.M. KANADE, J.